

U. S. ARMY

PROCUREMENT POLICY

ALERT BULLETIN

NO. 96-009

October 1, 1996

The enclosed documents are forwarded for your information and any necessary implementation in advance of formal publication of a Federal Acquisition Circular (FAC), or Defense Acquisition Circular (DAC). There will be no Department of the Army-level supplementation or implementing instructions.

ENCLOSURES:

1. DPP Memorandum, Subject: Test Program for Negotiation of Comprehensive Subcontracting Plans, D.L. 96-016, July 31, 1996
2. DPP Memorandum, Subject: Class Deviation--Use and Charges Clause, DAR Tracking Number: 96-O0007, September 6, 1996.
3. ENCLOSURE HAS BEEN DELETED (Previously distributed copies should be destroyed).

This bulletin is issued by the U.S. Army Contracting Support Agency. Comments or questions should be referred to the Policy and Procedures Division, SFAE-CSA-PP, 5109 Leesburg Pike, Falls Church, VA 22041.

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Bulletin 96-009 consists of 35 pages.

Release Approved By: _____



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20310-3000



July 31, 1996

DP(DAR)

In reply refer to
DFARS Case: 96-D304
D. L. 96-016

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN
(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Test Program for Negotiation of Comprehensive Subcontracting Plans

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect changes to the test Program for Negotiations of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106). We have also made editorial changes to DFARS Part 219 to reflect revisions to FAR Part 19 published in Federal Acquisition Circular 90-32.

The attached interim DFARS rule (Atch 1) is effective immediately and will be published in a future Defense Acquisition Circular.

For your information, I have provided a copy of the revised Test Program for Negotiation of Small Business Subcontracting Plans prepared by the Office of Small and Disadvantaged Business Utilization (Atch 2).

Eleanor R. Spector
Director, Defense Procurement

Attachments

cc: DSMC, Ft. Belvoir

PART 219 -- ~~SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS~~
[SMALL BUSINESS PROGRAMS]

* * * * *

SUBPART 219.7 -- SUBCONTRACTING WITH SMALL BUSINESS [,] AND SMALL
DISADVANTAGED BUSINESS [AND WOMEN-OWNED SMALL BUSINESS] CONCERNS

219.702 Statutory requirements.

(a) Section 834 of Pub. L. 101-189, as amended [,] ~~by Section 7103 of Pub. L. 103-355~~, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will ~~increase~~ **[reduce administrative burdens while enhancing]** subcontracting citing opportunities for small **[and small disadvantaged]** business concerns.

* * * * *

219.708 Solicitation provisions and contract clauses.

(b) (1) (A) Use the clause at 252.219-7003, ~~Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts)~~ **[Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)]**, in solicitations and contracts that contain the clause FAR 52.219-9, ~~Small Business and Small Disadvantaged Business Subcontracting Plan~~ [Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan].

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702 (a), use the clause at 252.219.7004, ~~Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program)~~, **[Small, Small Disadvantaged and Women-owned Small Business Subcontracting Plan (Test Program),]** instead of the clauses at 252.219-7003, ~~Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts)~~ [Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)], and FAR 52.219-9, ~~Small Business and Small Disadvantaged Business Subcontracting Plan~~ [Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan].

(2) * * *

(c) (1) * * *

(A) When contracting by negotiation, use the clause at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and

Universities, and Minority Institutions, in all solicitations and

**TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL
BUSINESS SUBCONTRACTING PLANS
(Revised July 11, 1996)**

I. Purpose

This document implements Section 834 of Public Law 101-189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense (DoD) contracts.

II. Authority

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

III. Program Requirements

A. The Program shall be conducted from October 1, 1990, through September 30, 1998.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811 (b) (3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104-106. Eligible contractors are large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Were performing under at least three DoD contracts; furnished supplies or services (including professional services) to DoD, engaged in research and development for DoD, or performed construction for DoD; and were paid \$5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 1998.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III (B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher level division, but would meet the criteria of paragraph III (B) (2), shall be permitted to participate in the Program if the lower level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the last fiscal year, except as provided in paragraph III (C) (2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III (B) (2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Section 215.605 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific

industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as close as possible to September 30.

V. Procedures

A. The Service Acquisition Executive within each military department and defense agency having contractors that meet the requirements of paragraphs III (B) and (C) shall designate at least three but not more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Service Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization, for their military department or defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

2. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

3. Distribute copies of the approved subcontracting plan in accordance with paragraph VI (A).

4. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95-507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

5. Upon receipt of the information provided by the participating contractor under paragraph V (C) (4), direct the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219-7004 for the clause at FAR 52.219-9, and will delete the clauses at FAR 52.219-10 and 52.219-16 and DFARS 252.219-7003 and 252.219-7005, as appropriate.

6. Review annually, with the contract administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI (A), within 45 days of the end of the fiscal year.

7. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

8. By December 15, 1998, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the program. The report distribution will be in accordance with paragraph VI (A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptable comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts unless otherwise required in accordance with paragraph III (C) (5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95-007. Large business concerns receiving a DoD subcontract in excess of \$500,000 (\$1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219-9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviation provisions of DFARS 252.219-7004. Accordingly, large business subcontractors to the participating contractors shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 30, 1998, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95-507.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061.

2. Director, Small and Disadvantaged Business Utilization for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

B. Each participating contractor shall complete the SF 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below:

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061.

2. Participating contractors shall enter in Item 14 "Remarks" block the annual corporate, division or plant-wide small business, small disadvantage business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV (A) (2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report for Individual Contracts" for DoD contracts during their participation in the Program.



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20310-3000
September 6, 1996



DP (DAR)

In reply refer to
DAR Tracking Number:

96-O0007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN
(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Class Deviation -- Use and Charges Clause

Effective September 30, 1996, the military departments and defense agencies shall use the attached clause as prescribed in the attached language at 45.106 (h) and 45.302-6 (c) (2) in all solicitations released after that date, and in contracts awarded to existing contracts subsequent to the date of this memorandum if adequate consideration is received. Also attached is alternate language for Federal Acquisition Regulation (FAR) 45.1, 45.2, 45.3, and 45.4, which provide guidance on furnishing government property to contractors, and contractor use and rental of government property.

The clause makes the time property is actually used for commercial purposes the rental basis, permits contractors to obtain property appraisals from independent appraisers, permits appraisal-based rentals for all property, and also allows contracting officers to consider alternate bases for determining rentals. These rental policy changes are intended to encourage dual use of DoD government property.

This class deviation is approved for a 2-year period ending September 30, 1998 or until FAR Part 45 is revised to include these provisions, whichever occurs first.

Eleanor R. Spector
Director, Defense Procurement

Attachments

cc: DSMC, Ft. Belvoir

PART 45 -- GOVERNMENT PROPERTY

* * *

45.106 Government Property Clauses

* * *

(h) The contracting officer shall insert the clause at 52.245-9, Use and Charges (Deviation) in (i) fixed price or labor hour solicitations and contracts under which the Government will furnish property for performance of the contract; (ii) amendments that furnish government property under fixed price or labor hour contracts that do not include the clause at 52.245-9, Use and Charges (deviation); or, (iii) all cost reimbursement and time and materials solicitations and contracts.

* * *

45.202 Evaluation procedures.

45.202-1 Rental equivalents.

If a rental equivalent evaluation factor is used, it shall be equal to the rent allocable to the proposed contract that would otherwise have been charged for the property, as computed in accordance with the clause at 52.245-9, Use and Charges. (~~S[s]ee 45.205 (b) for solicitation requirements.~~) **[or 52.245-9, Use and Charges (Deviation), whichever is in the contract.]**

* * *

45.205 Solicitation requirements.

* * *

(c) Solicitations shall provide that using Government production and research property (other than as described and permitted in the solicitation (see paragraph (b) above)) will not be authorized under the contract unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with ~~the clause at~~ **[52.249-9, Use and Charges (Deviation)]**, is charged, or the contract price is reduced by an equivalent amount. (See 45.203 for postaward requests for special tooling and special test equipment and 45.204 (c) for solicitation requirements for special tooling and special test equipment with residual value.)

* * *

45.302-6 Required Government property clauses for facilities contracts.

* * *

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges (**Deviation**), in solicitations and contracts ~~(i)~~ when a consolidated facilities contract or a facilities use contract (see 45.301), or (ii) a fixed price contract is contemplated. ~~and Government production and research property is provided other than on a rent free basis.~~

* * *

45.403 Rental -- Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges, **[or in accordance with the procedures of the clause at 52.245-9, Use and Charges (Deviation), whichever is in the contract.]** ~~If the agency head or designee determines it to be in the Government's interest,~~ Under the clause at 52.245-9, Use and Charges, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges may be charged on the basis of use rather than the rental period, or on some other equitable basis **[if the agency head or designee determines it to be in the Government's interest.]** In such cases, the clause at 52.245-9, Use and Charges **[(Deviation)]**, ~~shall be appropriately modified [should be used.]~~

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

* * *

45.407 Non-Government use of plant equipment.

* * *

[(d) Charge an appropriate rental (see 45.403) when non-Governmental use is authorized.]

* * *

52.245-9 Use and Charges (Deviation)

Use the following clause when government property and real property is to be used for commercial purposes:

USE AND CHARGES (APR 1984) (DEVIATION)

(a) Definitions.

As used in this clause --

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

Government property means property owned or leased by the Government.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which government property is made available for commercial purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) General.

(1) Rental requests must be submitted to the administrative Contracting Officer, identify the property for which rental is requested, propose a rental period, and calculate an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (c) of this clause.

(2) The Contractor shall not use government property for commercial purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(c) Rental Charge.

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the administrative Contracting Officer at least 30 days prior to the date the property is needed for commercial use. Except as provided in paragraph (c) (1) (iii) of this clause, the administrative Contracting Officer shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rate.

(iii) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) Other government property. The Contractor may elect to calculate the final rental charge using the appraisal method described in paragraph (c) (1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour --

(Rental Time in hours) (.02 per month) (Acquisition Cost)

Rental Charge = 720 hours per month

(3) Alternate methodology. The Contractor may request consideration of an alternate basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(d) Rental Payments.

(1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time and computation. Unless otherwise permitted by law, payment shall be made by check payable to the Treasurer of the United States and sent to the contract

administration office identified in this contract or by electronic funds transfer to that office.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the sixty-first day following completion of the rental period. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(e) Use revocation. At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(f) Unauthorized use. The unauthorized use of government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)